IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7834 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ANAND PEOPLES CO - OP BANK LIMITED

Versus

REGIONAL TRANSPORT OFFICER

Appearance:

MR GM JOSHI for Petitioner

MR MA BUKHARI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/07/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The petitioner-Bank advanced loan to its customer for purchase of a vehicle which was hypothecated to the petitioner-Bank and as per the terms of Hire Purchase in

case of default in payment of loan amount, the vehicle can be seized by the Bank and can realise the amount of loan from the sale of the same. In this case, the petitioner bank advanced loan for the purchase of the vehicle in dispute to its owner. On default of the borrower, the petitioner-bank started necessary proceedings. Ultimately, the borrower voluntarily surrendered the vehicle to the Bank which was put to auction. However, due to less realisation, the sale proceedings were dropped and since then the vehicle is lying as it is and put to no use. The petitioner-Bank accordingly informed to the Regional Transport Officer, Nadiad by way of filing proper application that since the vehicle is in non-use and not to be used for any purpose whatsoever, exemption may be granted from payment of tax. On 29th November, 1996, Mr. P.S. Patel, Inspector, inspected the vehicle and has given a report that the vehicle may not be put to use without prior permission of the R.T.O. and to take prior permission from R.T.O. before putting it to use. On 19th February, 1998, 20th March, 1998 and 23rd April, 1998, the Inspector visited the place and inspected the vehicle. In fact the R.T.O. Nadiad has written communication to the R.T.O. Vadodara for granting exemption as per the legal opinion of the Government, as the vehicle is not using the road which is pre-requisite condition for levy of tax. It is the case of the petitioner that the tax has to be collected only when the vehicle is plying on the road i.e. it uses the public road. On 4th August, 1998, the respondents-authorities issued show cause notice demanding Rs.1,21,095/= which includes penalty on the ground that the application for exemption is not applied for the year 1997-98. It is the case of the petitioner that the Inspectors have from time to time virtually and physically inspected the vehicle upto March, 1998 and the vehicle is not put to any use and has not seen the road from the date of seizure, the demand of the tax, as per the case of the petitioner is wholly arbitrary and unjustified. This petition has been filed in which the prayer has been made for quashing of that demand.

3. Reply to the special civil application has been filed by the respondent and therein it is given out that the vehicle was owned by one Bharatkumar K Shah. He paid the composite tax of the vehicle upto 31st March, 1996. It is an admitted case of the respondent that on 2nd March, 1996, the possession of the vehicle was taken by the Bank from the owner Bharatkumar K. Shah. The respondent further admitted that the said vehicle was thereafter put under non-use by the petitioner-Bank and non-use certificate for the said vehicle was granted for

the period from 1-4-1996 to 31-3-1997. It is also admitted by the respondent that the petitioner-Bank made an application in the prescribed form being Form "NT" as per Rule 5 of the Bombay Motor Vehicles Tax Rules, 1959. It is the case of the respondent that the petitioner-Bank has not submitted any application in the prescribed form "NT" for the period between 1-4-1997 to 31-1-1998 for placing the said vehicle under non-use and for this default of the petitioner, what the respondent has come up with the case that it is liable to pay the composite tax for the vehicle for the said period. So what the respondent say that the petitioner has not filled up the form "NT" for placing the said vehicle under non-use under Rule 5 of the Rules aforesaid, the tax liability is there on the petitioner. The respondent has admitted as a fact that the petitioner has made an application in the prescribed form "NT" for placing the vehicle under non-use from 1-2-1998.

4. I fail to see any justification in the approach of the respondents in the matter where admittedly the vehicle has been seized by the Bank for non-payment of loan by the borrower and non-use certificate has been granted for the period from 1-4-1996 to 31-3-1997, there is no report of the Inspector that the vehicle was put to use during the period from 1-4-1997 to 31-1-1998 or thereafter and that the petitioner has applied for non-use certificate on 19-2-1998, for demanding such a huge tax from the petitioner. It is not gainsay that in case the Officers of the respondents would have acted realising their duties and having the justice oriented approach and the reality of the things then this avoidable litigation would not have been there in this court. It is this approach of the Officers of the State of Gujarat which has given rise to manifold litigations before this court and has unnecessarily burdened the court. Even if it is taken that the application has not been made, looking to the fact that the vehicle has not been put to any use during this period in dispute, the application would have been taken for grant of post-facto certificate. The respondents-Officers have acted highly technical in the matter. This technical approach in such matters deserves to be deprecated. The Bank is already facing the problem to recover the loan though attempt has been made to seize the vehicle and it is lying non-use for all the period and the same was put to auction also, but fair offer has not been received and it is still lying unused. It is difficult to appreciate the action of the Officers of the petitioner-Bank also. They have also acted in the same manner and fashion as what the Government Officers are acting. They should have also

taken the care to see that proper application is made to the respondents-authorities. In case such technical approach of the respondent-R.T.O., Vadodara is permitted to be applied and given effect to then certainly it will not be in the larger interest of the people. It is people's money which has been advanced by the bank to the borrower. It is also equally true that tax is also people's money but in the facts of this case, if this amount is to be recovered from the Bank where the value of vehicle is even not sufficient to meet out the debit balance of the borrower, this may be additional burden on the bank of this tax. Law is meant for doing substantial justice. Law is there to see that bonafide persons are not being unnecessarily harassed. It is understandable if in case the owner himself would have been in possession of the vehicle then all these technicalities would have been permitted. By any stretch of imagination it cannot be accepted nor it is the case of the respondents that the Bank has put this vehicle on road on any date. It is also not feasible, possible and permissible for the Bank to put this vehicle for use on road. Even it is not the case of the respondents that the vehicle has been put on road by the bank. In the facts of this case, though respondents may be technically correct but it is totally against the basic principles of fairplay and natural justice and against the public interest to permit them to realise this amount of tax from the petitioner. However, the petitioner is directed to file an appropriate application for this period in dispute for getting certificate for non-use of the vehicle before appropriate authority and the appropriate authority to consider the same and pass the order as it is not its case that the vehicle has been put to any use on road during the period in dispute. This has been ordered so that the record may be completed.

5. In the result, this special civil application succeeds and the same is allowed and the show cause notice dated 4th August, 1998 is quashed and set aside. Rule is made absolute accordingly. Though at one point of time I thought of to impose heavy costs upon the respondents, as the petitioner's Officers are also equally responsible in the matter, no order as to costs.

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